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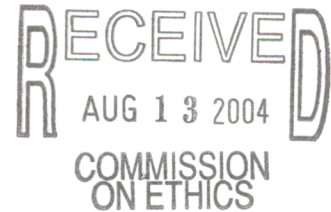
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August 13, 2004



State of Nevada  
Commission on Ethics  
3476 Executive Pointe Way, Suite 16  
Carson City, Nevada 89706-7946

**Re: In the Matter of the Request for Opinion (Ethics  
Complaint) concerning the conduct of Kathy Augustine  
State Controller Request for Opinion No. 04-47**

COMES NOW, State Controller Kathy Augustine, by and through Counsel John L. Arrascada of the Law Firm of Arrascada and Arrascada, and Dominic P. Gentile, and provide this response to the Request for Opinion (Ethics Complaint), No. 04-47. The response will be numbered and directed in the order as they were raised by the Attorney General's office in their request for the opinion regarding ethics.

1. Using state employees Jennifer Normington, Jeannine Coward, Sheri Valdez, and Susan Kennedy to compile guest lists for campaign fundraisers, type campaign contribution lists, type secretary of state campaign filings, draft campaign function invitations, write campaign speeches, log campaign contributions work on campaign mailers, and attend political fundraisers on governmental time. In violation of NRS 281.481(7).

NRS 281.481(7), provides that, "a public officer or employee, other than a member of the Legislature, shall not use government time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purpose if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost of value related to the use is nominal; and

(4) The use does not create an appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

NRS 281.437 states that a, “willful violation” is defined to mean that the public officer or employee knew, or reasonably should have known, that his conduct violated this chapter.

Based upon the evidence and information provided to the Ethics Commission, by the Attorney Generals’ Office State Controller Augustine admits, with explanation, that she reasonably should have known that the time expended by Jennifer Normington on Controller Augustine’s’ campaign was more than that allowed by law.

The reply will also address the violation should not pertain to the de minimus activities of Jeannine Coward, Sheri Valdez and Susan Kennedy. This reply is based upon the investigation of the Attorney General’s office and documents and exhibits provided by Controller Augustine. Further documents will be provided to this Commission upon request.

Jennifer Normington was hired as the Executive Assistant to Controller Augustine on October 4, 2001. Her job duties included, but were not limited to, answering phones, logging checks received, preparing personnel files, speech writing and scheduling for Controller Augustine.

During Jennifer Normington’s employment, Controller Augustine began preparing and running for re-election. Contrary to the complaint, Controller Augustine retained Robin Joyce and Associates as campaign consultants. Robin Joyce was in charge of all radio, media, billboards, and production. According to Controller Augustine, Robin Joyce was paid nearly fifty thousand dollars. (see Augustine transcript p. 54). Controller Augustine also acted as her own campaign manager. (see Augustine transcript p. 57).

As the campaign progressed, Jennifer Normington began doing more and more work on the campaign. Controller Augustine was and still is under the impression that Normington was doing all of the campaign work on a volunteer basis. As stated by Controller Augustine in her interview, “She had a lot of people volunteer” (p.59) She admitted that Jennifer Normington and Jeannine Coward volunteered from her office. (p.59). Controller Augustine further stated that Sheri Valdez assisted after hours on the campaign. (p.60). Controller Augustine state, “...the work that was done by couple of people in my office was purely voluntary.” (p.62).

Controller Augustine candidly admitted that she saw Jennifer Normington work on her campaign during work hours. (p.65). She further stated that, “You know, and she wasn’t asked, to do it, it was it was... kind of voluntary and like I said she –she would create them on a computer and –and share it with me later.” (66).

As Controller Augustine stated, "once again you know I have to reiterate you know nobody was coerced nobody was forced it was strictly um voluntary nobody was reimbursed." These statements were provided during an Attorney General interview ordered by the Attorney General, without notice to Controller Augustine regarding the topic evidence obtained by her former employees and her perception of the work done by her staff on her campaign. This perception is directly opposite her accusers but is supported by the following.

The perception that Controller Augustine was forcing employees to work on her campaign on state time is belied by the fact that two employees she asked to assist on the campaign refused. Their refusal was later accepted by Controller Augustine without repercussion to the employee.

The first employee was Judy Heatherington. Heatherington was asked to do campaign work and refused. Thus, Ms. Augustine did the work on her own.

The second example is Jim Wells. Mr. Wells was asked to prepare campaign finance records and he refused believing it was in conflict with his job as a neutral state employee. In an e-mail Controller Augustine accepted his reply and took the matter into her own hands.

Mr. Wells in his e-mail also supports the fact that Controller Augustine believed any campaign work was voluntary based on his statement, "if you ask me to prepare the report on my own time and I agree there is not a problem. When I or any other member of your staff volunteer our time to assist you either with your campaign or by attending an event on your behalf, we do it because we want to not because we have to." Significant is that not a single employee told Controller Augustine that they did not want to do the work. Their impressions of reprisal are unfounded and are not apart of this ethics complaint.

Notwithstanding all of the involved parties perceptions and misperceptions, Controller Augustine admits that she reasonably should have known that Jennifer Normington was expending state time on her campaign in the form of preparing Secretary of State Filings, campaign contribution lists, maintaining mailing lists provided by other individuals, agencies, and various entities, and designing invitations to 3 fundraisers held on behalf of Controller Augustine. Controller Augustine admits she reasonably should have known the work was being done on state computers because Jennifer Normington would bring in information from her desk to Controller Augustine. This violation of the code of ethics should be viewed as one course of conduct and one violation. Thus, we will not address number 2 of the complaint based on this position.

3. State Controller Kathy Augustine willfully caused the Office of the Controller to incur expenses in support of her candidacy for State Controller. Such expenses include: salaries paid to employees while not performing official duties, office supplies such as letterhead, address labels, fax paper and other material used for creating and transmitting campaign correspondence. In Violation of NRS 281.544(1) (b)



This statute was passed by the Nevada State Legislature and became law in 2003. It is Controller Augustine's position that this statute cannot be applied retroactively and thus does not apply. Notwithstanding this position, Controller Augustine is prepared, upon request, to provide all receipts for her campaign material and further contends that any use of state paper or transmitting devices was de minimus.

Sincerely,

  
Dominic P. Gentile, Esq.

  
John Arrascada, Esq.